

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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U.S. DISTRICT COURT, E.D.N.Y.
★ MAY 24 2005 ★

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UNITED STATES OF AMERICA,

v.

GLENN MARCUS,

Defendant.
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05-MJ-611

BROOKLYN OFFICE

May 16, 2005

Brooklyn, New York

TRANSCRIPT OF CRIMINAL CAUSE FOR DETENTION HEARING
BEFORE THE HONORABLE JOAN M. AZRACK
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:

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1 THE CLERK: Criminal cause for detention hearing,
2 case number 05-611-MJ, United States versus Glenn Marcus.
3 Counsel, please state your names for the record.

4 MR. WENNER: For the government, David Wenner.
5 Good morning.

6 THE COURT: Good morning.

7 MS. WHALEN: The Legal Aid Society by Mildred
8 Whalen. Good morning, your Honor.

9 THE COURT: Good morning. This was put over at
10 your request, Ms. Whalen?

11 MS. WHALEN: Yes, it was, your Honor. Basically,
12 we closed the last appearance. I was asking for release on
13 my client's own recognizance. Judge Mann denied it. So I
14 put a bail package together and called on Friday to have us
15 come forward. So it was a permanent order of detention but
16 I put it on the calendar.

17 THE COURT: Okay.

18 MS. WHALEN: Your Honor, I do have a bond package
19 here. I've got my client's parents, Gerard and Belle
20 Marcus. They are willing to sign the bond. Ms. Marcus is a
21 housewife. Mr. Marcus runs a hedge fund, a funds account.
22 They are willing to post their home, which is located at 750
23 Mulberry Place in North Woodmere, New York. The home has a
24 value of approximately \$650,000 to \$850,000 and currently
25 has no mortgage. They've completed a confession of

1 judgment. All we're waiting for is a bond amount and they
2 will sign it and then immediately file it.

3 Mr. Marcus's roommate Rhona Cohen is also here
4 today. She's confirming that Mr. Marcus can come back and
5 live with her at their residence. Mr. Marcus this morning
6 signed an Equifax credit report which shows that he doesn't
7 have any other assets outstanding.

8 Your Honor, I'm in receipt of the government's
9 letter of today, May 16th, arguing that Mr. Marcus is both a
10 risk of flight and a danger to the community, and that there
11 is no set of circumstances that can assure either his
12 appearance in court or the safety of his victim.

13 With respect to risk of flight, I believe that
14 that's now addressed by his parents posting a home of
15 considerable value to secure whatever bond amount that the
16 Court would set, and the fact that his roommate is here.
17 And she was present when he was arrested, when their home
18 was searched, and she is still willing to take him back. So
19 I think that does demonstrate ties to the community that are
20 in fact substantial.

21 With respect to the issue of dangerousness, the
22 government's only -- the only new fact that the government
23 is alleging in its letter deals with I think the issues that
24 I raised last week about the facts of the case and the
25 issues that are raised in the complaint about this woman and

1 her claim that she was forced here.

2 If the Court has read the complaint, there is an
3 issue of the woman moving several times. There is an issue
4 of the woman working. So that a lot of this claim of force
5 I think is going to deal with the psychological claim that
6 he somehow had a hold over her that would require her to
7 return, even though these other things were happening.

8 The government is now claiming on page 2 in the
9 last paragraph that after her escape, which I call into
10 question, the defendant continued to threaten this witness
11 with retribution and threatened to send the web site images
12 of her to the newspapers and to her parents, and that that
13 was a way that she would always be in his service and could
14 never escape from him.

15 Your Honor, I think that this issue of him being a
16 danger to the community can be fully addressed by the
17 witness tampering provisions of any bond that's set. The
18 Court can impose a condition that he have no contact. I
19 mean, I've already told him not to have any contact with
20 anyone that he believes is a complaining witness in this
21 case.

22 The Court could ensure that there was no
23 telephonic contact. The Court could limit his access to
24 computers, and the government could monitor the witness'
25 phone calls. They could monitor her e-mail accounts. And

1 if there was any contact from someone alleging to be Mr.
2 Marcus, we could have a hearing to address that.

3 But at this point, given the fact that the
4 allegations are four years old, that they date from 2001;
5 given the fact that even while the allegations were ongoing,
6 there is a real issue about the ability of Mr. Marcus to
7 force this woman into the labor that she claims he forced
8 her into, I think that the bond that's set would be
9 sufficient both to eliminate him as a risk of flight and
10 also would be sufficient, with witness warnings and certain
11 monitoring behavior, for the Court to be convinced that my
12 client would have no access to this witness and could not
13 influence her in any way.

14 THE COURT: Alright, I'll hear from you again.
15 Let me hear from the government. This is obviously my first
16 exposure to this case. I've read the complaint, I've read
17 your letter and the Pretrial Services report.

18 MR. WENNER: Very well.

19 THE COURT: What's happened since 2001?

20 MR. WENNER: With the victim, your Honor?

21 THE COURT: When did she escape?

22 MR. WENNER: She escaped in I believe October,
23 2001.

24 THE COURT: Okay. And since then --

25 MR. WENNER: And since then --

1 THE COURT: -- she has had no contact with him?

2 MR. WENNER: That is not true. Since then, she
3 has had contact with him. He has contacted her. In
4 addition, she resides near the apartment that I believe he
5 and Ms. Cohen reside at.

6 Aside from that, on the web site, he placed
7 threatening, I guess for lack of a better word,
8 notifications, including a banner of some sort that
9 suggested to those members of his web site, people who
10 viewed it, if you get a picture of this person, let me know
11 and I'll give you free access to my web site. So not only
12 did he harass her but he also --

13 THE COURT: I understand.

14 MR. WENNER: -- I guess invited others to do the
15 same.

16 THE COURT: And that was when?

17 MR. WENNER: That was within the past few months,
18 your Honor. The telephone contact has also been within the
19 past few months.

20 THE COURT: So there was -- so she escapes or she
21 leaves him.

22 MR. WENNER: Yes.

23 THE COURT: She successfully removes herself from
24 his premises.

25 MR. WENNER: Yes.

1 THE COURT: In '01. And then there is this time
2 lag or is this ongoing? What happens between '01 and '05?

3 MR. WENNER: With her?

4 THE COURT: With them.

5 MR. WENNER: With them.

6 THE COURT: I mean, is she living in the
7 neighborhood, like you described?

8 MR. WENNER: My understanding is that she was
9 living in the neighborhood. Then at some point she
10 contacted the authorities, after I think grappling with what
11 might happen to her.

12 THE COURT: What date was that, what year?

13 MR. WENNER: And I believe that the contact with
14 her was in January of 2004, approximately.

15 THE COURT: But between '01, when she escapes, and
16 '04, she doesn't contact the police.

17 MR. WENNER: No. But at the same time, she had
18 been told by the defendant that if she were to contact the
19 authorities, he would undertake efforts to humiliate her by
20 releasing the photographs on the web site to the press as
21 well as to her parents, and other harm would come to her.

22 THE COURT: And she contacted the authorities in
23 '04.

24 MR. WENNER: Exactly, in early '04, yes.

25 THE COURT: Then describe to me what their contact

1 is between '04 and now. I don't know when it '04 it was.

2 MR. WENNER: There have been telephone calls. The
3 defendant has contacted her and they've had whatever
4 discussions, conversations, et cetera, about various things,
5 including her being "in his service," what happened when she
6 was there, things of that nature.

7 THE COURT: But there was no physical harm to her
8 between '01 and today.

9 MR. WENNER: That's correct, your Honor, except
10 that from her monitoring of the web site and her repeatedly
11 asking the defendant to remove the images of her from the
12 web site, she felt threatened by him. She saw the banner
13 suggesting that others should try to find her, seek her out.

14 THE COURT: But she never moved?

15 MR. WENNER: No, she did not move. I would also
16 add, your Honor, aside from that issue, a lot -- a great
17 number of the events that are described in the complaint
18 occurred at the residence where the defendant and Ms. Cohen
19 resided, as well as an event occurred at the home of the
20 defendant's parents.

21 THE COURT: So what are you arguing?

22 MR. WENNER: I'm arguing, I suppose, that those
23 premises are not -- they're not, I suppose, safe places.
24 Who knows what he will continue to do at those places? In
25 addition, your Honor, while supervision of the Court can

1 prevent him at some level from calling her or contacting
2 her, it can only be in the instruction of the Court. There
3 is nothing the government can do to supervise him at all
4 times.

5 THE COURT: You can monitor all his phone calls,
6 he can be denied access to a computer, he can be on complete
7 lock-down, house arrest. I mean, she never moved. I'm not
8 saying that she should have to move.

9 MR. WENNER: I understand.

10 THE COURT: She left him in '01. This is some of
11 the most shocking behavior that I've ever read. But under
12 these circumstances, I guess I want to hear you on why the
13 conditions suggested, and perhaps even more, don't ensure
14 her safety. Then my other question is, is there any threat
15 to any other members of the community? It all seems to be
16 about this person.

17 MR. WENNER: Well, your Honor, I think first of
18 all --

19 THE COURT: I mean, there he is living with a
20 woman who says, he can live with me, I can sign a bond.

21 MR. WENNER: Right, a woman who, incidentally, was
22 not I think unaware of what was going on at this location.
23 In addition, while this particular --

24 THE COURT: Well, wait a minute. Was the proposed
25 suretor in his life in 2000/2001?

1 MR. WENNER: Ms. Cohen?

2 THE COURT: Yes.

3 MR. WENNER: I believe so, yes.

4 MS. WHALEN: My understanding is that he wasn't
5 living there at the time.

6 MR. WENNER: I don't know whether --

7 THE COURT: Living at the residence which is the
8 residence in Kew Gardens.

9 MR. WENNER: Your Honor, that's part of the
10 problem as well, that the defendant -- he might not have
11 been living there but I don't -- he didn't -- at the time
12 that these allegations in the complaint occurred, he didn't
13 necessarily have a permanent residence, somewhere that he
14 could claim as his own. In fact, when he was arrested, my
15 understanding is that the residence was his parents' is what
16 he gave.

17 THE COURT: I understand. Let me get back to my
18 other question. Are there any other -- do you have any
19 reason to believe -- do you have any evidence that he
20 conducted himself in this way with respect to any other
21 people?

22 MR. WENNER: Yes, your Honor. There was other
23 women in the same circumstances.

24 THE COURT: Other than one and two.

25 MR. WENNER: Yes.

1 THE COURT: Other than one and two.

2 MR. WENNER: Other than one and two, yes. I would
3 say conservatively --

4 THE COURT: And that's from what CW-2 has said.

5 MR. WENNER: And one, and from images on the web
6 site of other people.

7 THE COURT: So tell me why the proffered bail
8 package, including conditions such as phone calls monitored
9 other than his lawyer, computer usage, total house arrest,
10 limited visitation, approved list of people he could see --
11 why don't you discuss it with the agent and tell me why you
12 think that's not sufficient to ensure the safety of the
13 victim as well as other potential victims.

14 MR. WENNER: I think part of the difficulty, your
15 Honor, is for example, no computer usage. How is that
16 enforced by the Court? How is that prevented from
17 occurring?

18 THE COURT: I'll tell you how that's prevented.
19 I've done this in another case. I arranged to have -- in
20 another very close bail situation like this, Pretrial
21 Services, on Legal Aid's consent, went to the house. They
22 went, they took -- the defendant in that case offered up any
23 computer equipment he had.

24 Pretrial Services took it and then they were
25 permitted to search the house to make sure there was no

1 other equipment there, and then they were permitted searches
2 as they saw fit to ensure that. It's been months and months
3 and months and that's been satisfactory. It was in a
4 situation where children were victims. That's how it was
5 effectuated.

6 MR. WENNER: I think in addition, your Honor --
7 just one moment.

8 THE COURT: Does Pretrial -- do you want to weigh
9 in on this?

10 PRETRIAL SERVICES: I was going to say, your
11 Honor, that we, as far as monitoring -- I think you said
12 monitoring telephone calls. We can't really specifically
13 monitor all telephone calls. We have a curfew program where
14 we can ensure that he'll be in his house at certain hours.

15 THE COURT: I know the FBI has had bail packages
16 in previous cases -- has monitored calls, haven't you?

17 FBI AGENT: Your Honor, I've always said that we
18 need a Title III to be doing that.

19 THE COURT: Well, no.

20 MS. WHALEN: Your Honor, no. My experience has
21 been that I've had cases where there are allegations that
22 the threat was made. While you're not maybe monitoring the
23 person's phone calls, the minute they call and say, I've
24 gotten a call from so and so, your office has the ability to
25 subpoena the phone records and see where the call is coming

1 from and who it's coming from.

2 FBI AGENT: That's a (ui) register but that
3 doesn't tell you what the conversation is.

4 MS. WHALEN: At this point, we would be talking
5 bout a no-contact order. I mean, there wouldn't be any
6 contact, period.

7 THE COURT: I'm interested to hear from you,
8 because my problem in this case is as disgusting and
9 egregious and vile that everything you've alleged is, it's
10 with respect to a number of people and here I have his
11 family and this woman that he lives with, prepared to sign a
12 very substantial bail package with unbelievably strict
13 conditions.

14 I'm happy to hear you on anything else that would
15 put him in a position where he couldn't have any contact and
16 where there would be no potential for him to have any kind
17 of contract with these alleged victims.

18 MR. WENNER: Your Honor, insofar as Ms. Cohen is
19 concerned, I think that she would be an improper surety for
20 a couple of reasons. First, she was present and perhaps a
21 participant in some of the events that occurred. I would
22 say that this -- the allegations are not simply of physical
23 abuse but also of psychological influence and brain-washing
24 type of activity.

25 I would submit that Ms. Cohen, who has been with

22 MR. WENNER: He certainly should not be with Ms.
23 Cohen.

24 THE COURT: No, I think he should be at his
25 parents'.

1 him for a substantial amount of time, has been a participant
2 in these activities, may very well be in that category.

3 Certainly, aside from --

4 THE COURT: And therefore -- I could have a bond
5 and Ms. Cohen doesn't have to sign it. It's still a very
6 substantial bond.

7 MR. WENNER: Absolutely. That's true, your Honor.
8 I would suggest that that would be the most appropriate
9 thing. However --

10 THE COURT: This wouldn't even be a situation
11 where I would suggest that Ms. Cohen be responsible for him
12 complying with the bail conditions. I want his bail
13 conditions to be so tight that there's no question that he's
14 responsible and the government is looking at him all the
15 time.

16 MS. WHALEN: And I can even clarify that. Ms.
17 Cohen is not going to sign the bond. She financially is not
18 able. So I had put her forward as he had a place to go back
19 to, but his parents have also indicated that he can stay
20 with them.

21 THE COURT: I think he should be with his parents.

22 MR. WENNER: He certainly should not be with Ms.
23 Cohen.

24 THE COURT: No, I think he should be at his
25 parents'.

1 MR. WENNER: I suppose --

2 THE COURT: Tell me -- you've heard my concerns.

3 MR. WENNER: I have, your Honor.

4 THE COURT: What do you think that the bail
5 conditions be, beyond what I've suggested?

6 MR. WENNER: I just -- the fear I have is that I
7 believe that these conditions will address anything that has
8 happened. What I mean by that is if the defendant has made
9 contact, then by subpoenaing phone records, the government
10 would be able to find that out.

11 The fear, however, that I have is that that's
12 almost too late. If he were to break the bail conditions in
13 an effort to make contact or something like that, while it
14 is something that the government could perhaps find out
15 about, it's not something that the government can prevent.
16 It's all on his willingness to abide by them.

17 THE COURT: If it happens once, he's remanded.
18 Here we are in 2005 and this person escaped in 2001. If it
19 happens one time, he's remanded. I guess I feel that as
20 awful as these allegations are, the bail package that's been
21 offered with additional conditions really, in my view, does
22 ensure the safety of the community and these victims.

23 MR. WENNER: The only other issue, your Honor, and
24 this is something -- obviously, because this case has not
25 been indicted yet. There are forfeiture provisions for the

1 statutes that the government is investigating.

2 THE COURT: Right.

3 MR. WENNER: To the extent that some of these
4 activities occurred at this North Woodmere Home, there is a
5 possibility -- I don't know what would happen --

6 THE COURT: We can discuss that when that
7 possibility arises.

8 MR. WENNER: Very well.

9 THE COURT: If the government decides that they
10 want to seek to forfeit the parents' home, that will be a
11 decision that you'll make after due consideration. Let's
12 discuss the kinds of conditions.

13 MR. WENNER: Very well.

14 THE COURT: No computer, no laptop.

15 MR. WENNER: No computer in the home, no cell
16 phone --

17 THE COURT: Hold on, one at a time.

18 MR. WENNER: I'm sorry.

19 THE COURT: Could you have his parents come up?

20 MS. WHALEN: Yes.

21 THE COURT: I want to make sure his parents
22 understand this. Before we go through this list, let me
23 just say if there is any alleged violation of these bail
24 conditions, there will be no second chance. It's a very
25 close call here. Mr. Marcus will be remanded. There will

1 be no second chance. He will be brought back to me and
2 you'll have heard me now. He'll be remanded.

3 So we're talking about -- do you have a computer
4 in your home?

5 MR. MARCUS: Yes, I do.

6 MS. MARCUS: Yes.

7 THE COURT: Do you need to use your computer?

8 MR. MARCUS: Yes, I do.

9 THE COURT: Well, that's a problem.

10 (Pause in Proceedings)

11 MR. MARCUS: What if we monitor him, don't allow
12 him near the computer?

13 THE COURT: No.

14 MR. MARCUS: That's not sufficient?

15 THE COURT: No.

16 MR. MARCUS: Well, then --

17 THE COURT: Why can't you just use a laptop and go
18 to a local coffee shop if you have to use the computer?

19 MR. MARCUS: I'll make do. What do I have to do,
20 just turn the computer off and pull the plug? Do I have to
21 take it out of the house?

22 THE COURT: Yes.

23 MR. WENNER: Your Honor, I think it would have to
24 be out of the house.

25 THE COURT: I think it would have to be physically

1 out of the house.

2 MR. WENNER: To the extent a laptop is used --

3 THE COURT: Well, the laptop can't be in the
4 house.

5 MR. WENNER: Right. Mr. Marcus wouldn't be able
6 to have access to it in the slightest.

7 THE COURT: No, not the defendant.

8 MR. WENNER: Right.

9 THE COURT: Absolutely not.

10 MR. MARCUS: If those are the conditions, those
11 are the conditions.

12 THE COURT: Those are the conditions. No cell
13 phone. What else?

14 MR. MARCUS: Wait a minute, no cell phone in the
15 house?

16 THE COURT: You can have a cell phone.

17 MS. WHALEN: Mr. Marcus can't have a cell phone.

18 THE COURT: What do you want to do in terms of the
19 telephone? How do you want to deal with that, because
20 obviously there is a phone in the house. Do you want a
21 list? Do you want to have him agree to give you -- agree to
22 a pen register? What do you want to do?

23 MR. WENNER: I think a pen register on the phone,
24 a consensual pen register would have to be done.

25 THE COURT: Okay. A pen register on the phone

1 means that the government is permitted to learn the
2 telephone numbers that are being dialed from the home. Just
3 the telephone numbers, not the content of the calls.

4 MR. MARCUS: Okay, that's fine. I don't have a
5 problem with that.

6 THE COURT: But what is your recommendation with
7 regard to whether the defendant can use the telephone at
8 all? What's his employment?

9 MR. WENNER: He doesn't have any.

10 THE COURT: He doesn't need to use the phone.

11 MR. WENNER: I don't know that the defendant needs
12 to have access to the telephone but --

13 MS. WHALEN: I mean, other than to call his
14 attorney.

15 MR. WENNER: Right.

16 THE COURT: Yeah.

17 MR. MARCUS: What about if he wants to speak to
18 his nephews or my brother?

19 MR. WENNER: What about family contact, his
20 daughter? He has a very close relationship with his adult
21 daughter. She's been in contact with me.

22 THE COURT: Well then, I would suggest that you
23 compile a list of people that you probably would not have
24 any issue with him calling.

25 MR. WENNER: Exactly.

1 THE COURT: And he would be permitted to call. So
2 that when the pen register is reviewed, there isn't going to
3 be --

4 MR. WENNER: Right.

5 THE COURT: You're not going to seek remand
6 because he called his nephew.

7 MR. WENNER: Right.

8 THE COURT: Alright. He's going to be on house
9 arrest; random visits by Pretrial Services. House arrest
10 means he cannot leave the premises, your house, unless he
11 has an emergency medical visit or to come to court or to see
12 his lawyer, and that's it. That's got to be on notice to
13 Pretrial Services.

14 Do you understand that?

15 MS. MARCUS: Yes.

16 THE COURT: That's 24 hours a day and he'll be
17 electronically monitored. He'll have an electronic bracelet
18 on. The bond amount is going to be a one-million-dollar
19 bond, secured by your home.

20 MR. MARCUS: The home?

21 THE COURT: The home is not -- it's a one-million-
22 dollar bond secured by your home. If the defendant comes
23 back to court, you're not going to lose anything. If he
24 does not come back to court, if he flees, the home belongs
25 to the government, and then you would owe the government the

1 balance --

2 MR. MARCUS: The difference.

3 THE COURT: -- between what the home could be sold
4 for and a million dollars. If you have any hesitation about
5 this --

6 MR. MARCUS: No, I don't have any hesitation.

7 MS. MARCUS: No.

8 THE COURT: Because you need to understand this is
9 a very serious case and it's a very close call about whether
10 he's going to be released. I'm only releasing him under all
11 of these conditions. A one-million-dollar personal
12 recognizance bond secured by the home. Do you have the
13 address?

14 MS. WHALEN: It's 750 Mulberry Place, North
15 Woodmere, New York, 11581.

16 THE COURT: Do you have a passport?

17 THE DEFENDANT: No.

18 THE COURT: Don't apply for a passport.

19 MR. MARCUS: He's not going to be able to because
20 he can't go out of the house.

21 THE COURT: I know. What else? Do you want to
22 make a list in terms of people who can come to the home,
23 visitors?

24 MR. WENNER: That's what we were going to say. I
25 would say family members only. I don't know what business

1 associates --

2 THE COURT: Let me hear with respect to --

3 MR. MARCUS: I mean, we have friends. I would
4 want my friends to be there, our next-door neighbors.

5 MS. MARCUS: My sisters.

6 MR. MARCUS: There are a number of people.

7 THE COURT: Right.

8 MR. MARCUS: My brother --

9 THE COURT: What do you suggest, Ms. Whalen?

10 MS. WHALEN: I would suggest that the government
11 put together a list of people not permitted.

12 THE COURT: Alright.

13 MS. WHALEN: I think that will be easier.

14 MR. WENNER: That gives me concern, your Honor,
15 because I don't know that --

16 THE COURT: You don't know if you've identified
17 all the victims.

18 MR. WENNER: Exactly. We're still investigating
19 and I would hate to reveal anything.

20 MS. WHALEN: What I would say is that they would
21 be allowed their family members and their friends. The
22 government will put together a list of people that they
23 don't want there. If there later is someone identified,
24 where it becomes an issue, then we can come back to court.
25 But at this point, Mr. Marcus will agree not to have any of

1 his associates from that web site come to the home.

2 THE COURT: To the extent that friends and family
3 are friends and family of Mrs. and Mr. Marcus, they're
4 permitted to come to the home.

5 MS. WHALEN: Right.

6 THE COURT: And I'm sure that the defendant knows
7 these people. But the defendant is not to have any personal
8 friends come to the home. Is that clear?

9 MR. WENNER: Yes.

10 MS. WHALEN: What about Ms. Cohen?

11 MR. WENNER: Your Honor, I think that is an area
12 of grave concern for the government.

13 MS. WHALEN: But, your Honor, I think at this
14 point she is not named as a victim in this case. She is
15 here -- she's going to be a witness for the defense. If
16 they're concerned that he's going to somehow exert control
17 on her over statements that she's going to make -- I mean,
18 they could say that about anybody that we call as a witness
19 for the defense.

20 We're going to have to talk to these people.
21 We're going to have to investigate what they observed, what
22 they knew, what they saw. That's critical in this case,
23 especially when a lot of this is the allegation about
24 whether these acts were consensual or not.

25 MR. WENNER: Your Honor, if Ms. Whalen would like

1 to speak with these people, she is free to do so. But that
2 does not mean that Ms. Cohen should be going to Mr. Marcus'.

3 THE COURT: Ms. Cohen right now is not named in
4 the complaint.

5 MR. WENNER: She is not, your Honor. However, she
6 may -- at the time of the arrest of the defendant, she was
7 interviewed by FBI agents and made statements and things of
8 that nature that lead the government to believe that it
9 would be, for lack of a better word, unwise and/or unsafe
10 for her to be in contact with him. Like I said, if Ms.
11 Whalen wants to meet with her --

12 THE COURT: Wait. Who said (ui)?

13 MR. WENNER: Ms. Cohen made statements to the
14 agents that lead the government to believe that the
15 defendant exerted control over her and exerted a substantial
16 influence in her life. I think to the extent that Ms. Cohen
17 is aware of other people that were involved in this case,
18 other victims of the defendant, she is in a position to be
19 influenced by the defendant to perhaps involve herself in
20 things that we'd all rather not occur. If he can't call
21 people, she might be able to call people. I'm not saying
22 she's going to but --

23 THE COURT: Do you have any evidence of -- I mean
24 what -- this all is for whether she is -- she is obviously
25 not going to be on the bond but she is a close personal

1 friend of the defendant, and I guess they want to speak to
2 each other.

3 MR. WENNER: I think she is a close personal
4 friend of the defendant who is aware of the identity of some
5 of the defendant's victims and may, at his behest, be in a
6 position, I think is in a position to exert or carry out
7 directions from him.

8 THE COURT: Was she involved with him in 2001?

9 MR. WENNER: Yes, your Honor.

10 THE COURT: How long have they been together?

11 MR. WENNER: I think even before -- I think right
12 back to 1998. That's the other -- even though she has not
13 been --

14 THE COURT: Wait, Ms. Whalen isn't listening.

15 MR. WENNER: I'm sorry.

16 THE COURT: What were you saying?

17 MR. WENNER: I was going to say in addition, she
18 was present during some of the events that are described in
19 the complaint and that were carried on by the defendant.
20 Merely because she wasn't --

21 THE COURT: Present?

22 MR. WENNER: Present.

23 THE COURT: Present during some of his abuse?

24 MR. WENNER: Present, yes, your Honor.

25 THE COURT: You mean in the same physical space or

1 in the same house?

2 MR. WENNER: Present in the same physical space.

3 THE COURT: In a position to observe this.

4 MR. WENNER: I believe so, your Honor.

5 MS. WHALEN: Your Honor, Ms. Cohen has brought to
6 my attention the fact that she and Mr. Marcus have been
7 friends since they were thirteen years old. As to the
8 allegations of present, I think that there are really two
9 issues that are going on here. My client was involved in a
10 sadomasochistic sexual lifestyle and he was open, had a web
11 site about that.

12 Other people -- his parents knew about this. I
13 mean, other people know that this is -- that he has a web
14 site, that this is what he's involved in, but it doesn't
15 make it illegal. So the claims of the abuse --

16 THE COURT: It's illegal if Ms. Cohen is present
17 when a woman is being abused and held against her will.

18 MS. WHALEN: Yes, if she's --

19 THE COURT: This is one of the issues that are
20 going to have to be resolved at a trial stage, not today.
21 The question is what kind of interaction or contact can Ms.
22 Cohen have with this defendant, and I may be suggesting it
23 would have to be monitored.

24 MS. WHALEN: First of all, Ms. Cohen is saying
25 that she is willing to swear that she will have no contact

1 with anyone at Mr. Marcus's direction. I believe that in
2 other cases, with mob and with other witness-tampering
3 cases, the admonishment not to have contact with witnesses
4 has been extended to the defendant's friends and family.
5 And if the friends and family contact witnesses, that's
6 considered as witness tampering both on their part and on
7 Mr. Marcus's part. So I think that that can be resolved.

8 But the issues that they're raising in terms of
9 her not being able to have contact with him or having it
10 monitored in some way, I think that the witness-tampering
11 admonishment to her would be sufficient to cover the
12 allegations here.

13 And again, they are just allegations, and the
14 government is coming forward -- you haven't seen a copy of
15 Ms. Cohen's statements. I haven't and neither has Ms.
16 Cohen. To make these claims that she's somehow acting under
17 his Svengali presence -- I think that without more, you have
18 to err on the side of freedom.

19 THE COURT: So you're suggesting that he be
20 permitted to have -- the only contact he could have with her
21 would be if she came to the parents' house.

22 MS. WHALEN: Right.

23 THE COURT: And that she be given a strict
24 admonishment with respect to who she talks to.

25 MS. WHALEN: To not contact anyone at Mr. Marcus's

1 request. I believe that she here is willing to say she's
2 not going to have any contact with the witnesses on her own
3 initiative.

4 MR. WENNER: Your Honor, again, this is one of
5 those situations where that is a bell that can't be unrung.
6 It's not something that the government can monitor in
7 advance of it occurring. It's only something that, if the
8 scenario that the government is concerned about were to play
9 out, if she were to visit Mr. Marcus and he gave her some
10 instruction and then she were to carry it out, only if the
11 person that she contacted was willing to notify the
12 government would we even find about it.

13 If it is some sort of threat or something to that
14 extent, it would be too late. It would be something that we
15 would never be able to find out about it. It would be
16 something that we could never undo.

17 MS. WHALEN: Your Honor, I think that the
18 government could very easily find out about this. The
19 witnesses could tell him. I think that my client's ability
20 to exert this influence -- my understanding is that the
21 government has shut the web site down, and his ability to
22 act on this in any way I think can be monitored by the
23 government.

24 There is one clarification that Mr. Marcus's
25 parents have brought to my attention.

1 THE COURT: (Ui).

2 MS. WHALEN: Right, and they knew he had a web
3 site. They told me they knew he had a web site. They
4 didn't understand the content of the web site. Given that,
5 it was -- there really are issues as to the extent of the
6 allegations and the involuntariness of the allegations.

7 THE COURT: I'm sure you appreciate that if Ms.
8 Cohen is given explicit direction from me not to have any
9 contact with any potential witnesses in this case, she would
10 be committing a federal crime if she did.

11 MR. WENNER: You're right, your Honor; that's
12 correct. But it's a federal crime that obviously would
13 hamper the government's ability to prosecute the defendant.

14 THE COURT: This is so murky. This all has to do
15 with whether Ms. Cohen can visit Mr. Marcus in Mr. and Mrs.
16 Marcus's home.

17 MS. WHALEN: Your Honor, actually, at this point,
18 given the allegations that the government has made and given
19 the fact that the Court is inclined to admonish her --

20 THE COURT: I think Ms. Cohen ought to make a
21 decision on her own not to visit Mr. Marcus during the
22 pendency of this case.

23 MS. WHALEN: Well, be that as it may, I think if
24 the Court is going to admonish her, given the accusations
25 that the government has made, she probably needs to have

1 someone to advise her, and it can't be me.

2 THE COURT: No. Alright, here's what we're going
3 to do. For purposes of -- for today, the bail conditions
4 are going to be as I've already read into the record. Ms.
5 Cohen will not be permitted to visit Mr. Marcus. Ms. Cohen
6 should retain counsel and have discussions with counsel
7 about this issue. If you want to make another application
8 in the future with regard to it, I'll hear you. But I think
9 I'm more comfortable with the safety of the community and
10 the witnesses being protected if Ms. Cohen does not have any
11 contact with Mr. Marcus.

12 Do you understand, if your son violates any of
13 these conditions, he's going to be remanded and there aren't
14 going to be any second chances in this case? And more
15 seriously for you, if he doesn't come back to court, you're
16 going to lose your home and then have a judgment against
17 you. So you really have to have confidence that he's going
18 to comply.

19 Do you understand that Mr. and Mrs. Marcus?

20 MR. MARCUS: Yeah.

21 THE COURT: And you're sure you want to go forward
22 with this.

23 MR. MARCUS: Yes.

24 MS. MARCUS: Yes, he's my son.

25 THE COURT: Because he's going to be living with

1 you. Do you have any questions about what your obligations
2 are on the bond?

3 MS. MARCUS: No.

4 THE COURT: Mr. Marcus, do you understand these
5 conditions: House arrest, no computer use whatsoever, no
6 cell phone use whatsoever. There is going to be a pen
7 register on your phone. You're going to be able to have
8 social interaction with your parents' friends and relatives.
9 Other than that --

10 What are we going to do about the list?

11 MR. WENNER: Your Honor, I think that if Mr.
12 Marcus is having other than family --

13 THE COURT: Family and his parents friends.

14 MR. WENNER: Right. But having his own friends, I
15 think the government should be notified who those people
16 are.

17 THE COURT: Why don't you do that? Then we'll
18 modify the bond after you do that, Ms. Whalen, alright? And
19 the electronic monitoring -- he's going to have a bracelet.

20 PRETRIAL SERVICES: Also, what about the
21 possibility of a mental health evaluation and if necessary
22 treatment?

23 THE COURT: I don't know. Ms. Whalen, how do you
24 want to proceed with that because you may be doing something
25 on your own.

1 MS. WHALEN: Actually, I'd like to speak to my
2 client.

3 THE COURT: Alright. Let's hold off on that
4 because of the nature of the charges. You have a confession
5 of judgment executed, right?

6 MS. WHALEN: I don't have it because we didn't
7 have the amount. It's all prepared; they can drop it off on
8 the way home. They will sign it right here in the Court's
9 presence and then we'll fax over to the Court and to the
10 government --

11 THE COURT: Random home visits. Do you understand
12 that if there's any violation, however slight, you're going
13 to be remanded?

14 THE DEFENDANT: Can I ask a question?

15 THE COURT: Ask Ms. Whalen.

16 MS. WHALEN: Your Honor, Mr. Marcus was just
17 confirming that the random home visits are during daytime.

18 THE COURT: They're random; I don't know when they
19 are.

20 MS. WHALEN: Well, they don't come at 3:00 in the
21 morning, at a time that's unreasonable.

22 THE COURT: Right.

23 MS. WHALEN: Do you show up at 3:00 in the
24 morning?

25 PRETRIAL SERVICES: Not at 3:00. The earliest

1 I've done is 7:00 a.m.

2 MS. WHALEN: What's the latest?

3 PRETRIAL SERVICES: 6:00 at night.

4 MS. WHALEN: Is that acceptable?

5 MS. MARCUS: That's fine.

6 THE COURT: Mr. and Mrs. Marcus, let me just tell
7 you, if something occurs or if you get home after this is
8 all in place and you're not comfortable with it, you're not
9 comfortable ensuring that your son is going to comply with
10 this, come back to court.

11 MS. MARCUS: Thank you. What can I say? He's my
12 son.

13 THE COURT: Anything else? Do you have a
14 preliminary hearing date?

15 MR. WENNER: Yeah, we're all set.

16 MS. WHALEN: Your Honor, we'd actually withdraw --
17 since he's going to be released, we'll withdraw the
18 regarding for a preliminary hearing.

19 THE COURT: Have the government review the bond.

20 PRETRIAL SERVICES: Your Honor, in addition to
21 computers and cell phones, that would include any sort of --

22 THE COURT: Pager --

23 PRETRIAL SERVICES: Well, any sort of electronic
24 device. He won't be able to access Blackberries, anything
25 like that.

1 THE COURT: Does your client have a Blackberry or
2 a Palm Pilot?

3 PRETRIAL SERVICES: Or to the extent that Mr.
4 Marcus has any of those devices.

5 THE COURT: Mr. Marcus, do you have a Blackberry
6 or a Palm Pilot?

7 MR. MARCUS: I have a Palm Pilot but you can't
8 communicate with it.

9 PRETRIAL SERVICES: Okay.

10 MR. MARCUS: I do have a cell phone.

11 MS. WHALEN: And you're not going to let your son
12 use it.

13 MR. MARCUS: No.

14 MS. MARCUS: I have one, too.

15 MR. WENNER: The electronic monitoring is in the
16 home, 24 hours.

17 THE COURT: Except for emergency medical, court
18 appearances or consultation with his attorney.

19 (Pause in Proceedings)

20 THE COURT: Mr. Marcus, do you have any questions
21 about what your bail conditions are?

22 THE DEFENDANT: No, I don't.

23 (Tape off, tape on)

24 MR. WENNER: Your Honor, I'm just putting in that
25 he shall not have contact with any person except family and

1 friends of -- is it Gerard and I'm sorry, your name?

2 MS. MARCUS: Belle.

3 (Tape off, tape on)

4 MR. WENNER: Your Honor, in terms of whether
5 there's a travel restriction, it's duplicative --

6 THE COURT: He's on house arrest, so travel is
7 restricted to within the confines of his house.

8 MR. WENNER: Right.

9 THE COURT: Does anybody have any questions about
10 this bail bond?

11 MR. MARCUS: No.

12 THE COURT: Does everybody understand all the
13 conditions?

14 MS. MARCUS: We know.

15 THE COURT: Okay, thank you.

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I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in
the above-entitled matter.



ELIZABETH BARRON

May 20, 2005